IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13818 of 2005

For Approval and Signature:
HON'BLE MR JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAIRAVEE DHARMESH DAVE - Petitioner(s)

Versus

SURATMUNICIPALINSTITUTEOFMEDICALEDUCATIONANDRESEARCH & 1 - Respondent(s)

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Appearance :
MR DC DAVE for Petitioner No(s).: 1.
MR KB PUJARA for Respondent No(s).: 1.
MR L.B.DABHI, AGP for Respondent No.:2

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CORAM :HON'BLE MR JUSTICE DN PATEL

Date : 11/07/2005

ORAL JUDGMENT

1. Rule. Mr.K.B. Pujara, advocate waives notice of Rule for respondent No.1 and Mr.L.B. Dabhi, learned Assistant Government Pleader waives notice of Rule for respondent No.2.

2. This petition has been preferred under Article 226

of the Constitution of India against the communication dated 29th June,2005 issued by respondent No.1 (Annexure "E") and for getting a writ, order or direction upon respondents to treat the petitioner as a local student for the city of Surat for the purpose of admission at the Surat Municipal Institute of Medical Education and Research for first year M.B.B.S. Course for the Academic Year 2005-06.

3. Learned advocate for the petitioner submitted that a present petitioner is a resident of city of Surat at the address given in the cause title of the petition. The learned advocate for the petitioner submitted that the property at which the petitioner is residing was purchased by the father of the petitioner on 13th May,2000. Since then, the petitioner is residing there. The petitioner has been denied for getting the admission for the first year M.B.B.S. Course for the year 2005-06 by respondent no.1 College for the reason that the petitioner is not resident of city of Surat. For getting admission for the first year MBBS Course in the respondent No.1 College, there is a reservation for local students. Relevant rules for getting the admission in respondent No.1 College in the reserved quota for local students are as under :-

> "Admission to 85% Management / Local quota seats reserved for local students at SMIMER, Surat is as per the prevailing rules framed and amended from time to time by Surat Municipal Corporation.
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> **1. Local Student : The definition of the local student for the purpose of the admission to SMIMER, Surat is in accordance to the order of the Supreme Court in "Civil Appeal No.5989/1999 (arising out of S.L.P. (C) No.8096/1999) Dt.13-10-1999" as under:**

1.1 A student who has passed S.S.C. Examination (Std.X), Std.XI and the qualifying examination H.S.C.E. (Std.XII) from the schools located either within the limits of Surat Municipal Corporation (SMC) area or within the limits of Surat Urban Development Authority (SUDA) area, provided that he/she must be residing within the limits of Surat Municipal Corporation area.

1.2 The candidate desirous to apply for admission as local student shall have to produce documents (attested readable xerox copies) for at least last three years as specified in rule 1.2.1.

1.2.1 (1) <u>S.M.C. House Tax bills of only Residential Property</u> :-

(i) As owner: For atleast last three years in the name of the Student/ Father/Mother/Paternal grand father/ Paternal grand mother/Guardian (if parents are not alive)

OR

(ii) As Tenant :: For atleast last three years in the name of Student/ Father/Mother/Paternal grand father/ Paternal grandmother/Guardian (if parents are not alive) as possession holder

(2) Any of the following documents for atleast last three years. (in support of showing resident student of Surat)

(1) Ration Card
(2) Electricity Bill
(3) Passport
(4) Election Identity Card
(5) Gas Bill

in the name of Student/ Father/Mother/Paternal grand father/ Paternal grand mother/Guardian (if parents are not alive)

1.2.2 The college authority reserves the right to demand any other documents as proof of residence.

1.2.3 Original documents should be produced at the time of personal interview or whenever demanded by the college authority."

4. Learned advocate for the petitioner submitted that the petitioner is residing in the city of Surat since last more than three years. Enough number of evidences have been given to the respondent No.1 College as a proof of residence but the respondent college has not considered the petitioner as a local student and, therefore, the respondent ought to be directed for treating the petitioner as a local student for getting admission in first year M.B.B.S. Course in respondent no.1 College. It is also submitted that the respondent is insisting for house tax bills for atleast last three years in the name of student/ father/mother / parental grand father/ parental grand mother/ Guardian (if parents are not alive). It is also submitted by the counsel appearing for the petitioner that the petitioner has presented the Municipal Tax Bill for the year 2002-03. In the assessment register of the Surat Municipal Corporation, the name of the father of the petitioner is reflected as a person, who is primarily liable for the payment of the tax and in the column of occupier, the word "self" has been written. Thus, for the year 2002-03 though the Municipal Tax Bill is not reflecting the name of the father of the petitioner, the same is a mistake of the Surat Municipal Corporation. In fact, Assessment Register at (Exhibit "F") of Surat Municipal Corporation clearly reflects the name of the father of the petitioner as occupier. For rest of the two years i.e. for the year 2003-04 and 2004-05, the House Tax Bills are not in the name of the

father of the petitioner.

5. Learned advocate for the petitioner has also submitted that even election card also reflects the name of father of the petitioner as a voter in the city of Surat. Similarly, electricity bills are also in the name of the parents of the petitioner, which are at Exhibit-“D” to the memo of petition. Similarly, the gas connection bills, which are issued bi-monthly by Gujarat Gas Company Limited for the use of gas by the petitioner and his family members are also in the name of the father of the petitioner from year 2002 onwards. Even passport of the petitioner's father reflecting the residence in the city of Surat. The only defect is that in the Surat Municipal House Tax Bill, the name of the father of the petitioner is not reflected though assessment register of Surat Municipal Corporation reflects the name of father of the petitioner. It is submitted by learned advocate for the petitioner that the Assessment Register, which is at Annexure “F” and copy of which has also been tendered to the respondent no.1 ought to have satisfied the respondent No.1 for not to reject the name of the petitioner as a local student. It is vehementally submitted that the learned advocate for the petitioner that respondent No.1 is mainly concerned with the fact whether the petitioner is residing in the local limits of city of Surat or not. The nature of documents required as proof in Rule No.1.2.1 are illustrative in nature and, therefore, last three years bills may not be in the name of the parents of the petitioner but if the petitioner, otherwise satisfies, the respondent No.1 that the petitioner is residing in the City of Surat, the

respondent college must not insist for last three years Municipal Tax Bills. In the present case, copy of the Assessment Register for the year 2002-03 reflects the name of the father of the petitioner and, therefore, there is sufficient evidence with the respondent to prove the fact that the petitioner is residing in the city of Surat since last more than three years. There are enough, cogent and convincing other evidences, which prove that the petitioner is residing within a local limits of city of Surat. Petitioner has obtained 399 marks out of 450 total marks for the academic year 2004-05 examination held by Gujarat Secondary and Higher Secondary Education Board, Gandhinagar in 12th Standard Science Stream Examination, and, therefore, the petitioner is entitled to get admission in reserved category of seats for local quota in respondent No.1 College as a local student and, therefore, suitable direction may be given to respondent No.1 to treat the petitioner as a local student for giving admission in first year M.B.B.S. Course for the year 2005-06.

6. I have heard the learned counsel appearing for the respondent No.1 College Mr.K.B.Pujara. He submitted that as per admission rules, which are stated hereinabove, it is clear that the Surat Municipal House Tax Bills for atleast last three years ought to be in the name of the Student/ father/ mother/ parental grand father/ parental grand mother, Guardian (if parents are not alive). In the present case, for the year 2002-03, Surat Municipal House Tax Bill does not reflect the name of the father of the petitioner and, therefore, respondent No.1 has not treated as per Rule 1.2.1, the petitioner as a local student under Rule 1.1.

7. Learned counsel appearing for the respondent no.1 submitted that the Rules were published in advance. Even in admission form the rules have been reflected, the insistence of Municipal Tax Bill is on the basis of the judgment delivered by the Hon'ble Supreme Court in the case of **Ahmedabad Municipal Corporation and Another V/s. Nilaybhai R. Thakore and another**, reported in **(1999)8 SCC 139.** The local students, who are residing within the city limits and who have studied from the School situated within the limits of Surat Municipal Corporation area or from the School within limits of Surat Urban Development Authority area are entitled for reserved category admission for local students. It is submitted by the learned counsel for the respondent no.1 that to minimize the discretion of respondent no.1 as to which document should be accepted for proving the fact of residence, the rule 1.2.1 has been enacted and municipal tax bills for last three years has been given priority, in proving the fact of residence. Specification of proof always takes away the discretion from the adjudicating committee of admission of respondent No.1, and, therefore, in advance, it was intimated, to all the concerned, for availing the benefit of local students, Surat Municipal Corporation House Tax Bill for last three years will be necessary as a proof. In the present case, the petitioner has no such evidence and, therefore, the petitioner cannot be considered as a local student and, therefore, petition deserves to be dismissed.

8. Assistant Government Pleader Mr.L.B.Dabhi appearing for the respondent No.2, supports the

contention of respondent no.1.

9. Having heard the counsel at length for both the sides and looking to the facts and circumstances of the case, the rules for admission to first year MBBS Course and the judgment cited hereinabove delivered by the Hon'ble Supreme Court, I hereby quash and set aside the decision taken by the respondent No.1 dated 29th June,2005, mainly for the following reasons :

(i) That the petitioner has studied from the School situated in the city of Surat and cleared 12th Standard Science Stream Examination held by Gujarat Secondary and Higher Secondary Education Board and secured 399 marks out of 450 marks in science stream in Science and Maths theory subjects. The petitioner has applied for admission in first year MBBS Course, in the local quota seats, reserved for local students. The condition for availing local quota seats insist that the students must have passed the S.S.C. examination (Standard X) and Standard XI and the qualifying examination H.S.C.E. (Standard XII) from Schools located either within the limits of Surat Municipal Corporation area or within the limits of Surat Urban Development Authority area, **provided that he/she must be residing within the limits of Surat Municipal Corporation area**. Thus, to avail the benefit of reserved category seats, two conditions are required to be satisfied out of which, one is that student must be residing within the limits of Surat Municipal Corporation area. This type of reservation is permissible as held in the judgment delivered by the Hon'ble Supreme Court in the case of **Ahmedabad**

Municipal Corporation and Another V/s. Nilaybhai R. Thakore and another, reported in **(1999)8 SCC 139.** The respondent No.1 till last year was accepting all types of evidences including Municipal Tax Bill, Gas Connection Bill, Ration Card, Electricity Bill, Passport, Election Identity Card, etc. for proving the fact of residence in the city of Surat. From this year, rigid rule of proof has been adopted by the respondent No.1. Out of aforesaid group of evidences, one is bifurcated i.e. Surat Municipal House Tax Bill for last three years and rest of the evidences have been bifurcated in another group. The respondent No.1 is insisting last three years House Tax Bills for coming to the conclusion that whether he/she (applicant) is residing within the local limits of Surat Municipal Corporation area. The bifurcation made by the respondent No.1, in the nature of evidences required to prove the fact of residence is arbitrary.

(ii) What is to be kept in mind, by respondent No.1 is the proof of residence and not the nature of documentary evidence. As per Rule 1.1 of admission to first year M.B.B.S. Course, the applicant must be residing within the local limits of Surat Municipal Corporation area and, therefore, what is referred in Rule 1.2.1 (i.e. different type of documentary evidences) are mere illustrative in nature. The proof of residence can be Surat Municipal Corporation House Tax Bill and sometimes it cannot be. There are several possibilities in which, the applicants might be residing within the local limits since last more than three years, but they may not be have, House Tax Bills in the name of their name /parents/parental grand

father/parental grand mother. There can be even Government Officer, who are residing in the Government Quarter, whose name will not be reflected in the house tax bill neither as a owner nor as a tenant. There may be cases in which the parents of the applicant might be residing in the city of Surat, since last more than three years in the house of their distant relatives or close-friend therefore, the municipal tax bill will not reflect the name of the father of the applicant, neither as owner nor as tenant. There are other petitioners, of other Special Civil Applications, in which father/mother of applicant is residing in house alloted by Surat Municipal Corporation itself. In this case, no municipal tax bill be issue. In some cases, Government or Municipal Hospital has alloted houses to the parents of applicant. In such a situation also municipal tax bill will not reveal the name of father of applicant. There can be such type of parmutation and combination of facts wherein municipal tax bill might not be issued at all or if issued may not reflect the name of parents of applicant. There may be cases wherein, house tax is exempted. Therefore, minimum last three years house tax bills ought to be presented by the applicant, cannot be insisted by the respondent No.1 as a condition precedent, for proving the fact of residence.

(iii) When the burden of proof is upon the applicant (to the M.B.B.S. Course) that the applicant is residing within the limit of Surat Municipal Corporation area, the particular type of documentary evidence cannot be selected by the respondent No.1. It must be left at the discretion, who carries such burden

i.e. applicant of M.B.B.S. Course. The applicant **ought to produce the best evidence** before the respondent No.1 **to prove the fact that the applicant is residing within the Surat Municipal Corporation area** since last three years. Rigidity any acceptance of evidence ought to be deprecated. As stated hereinabove, there may be several combination of facts whereby, the applicant cannot present last three years House Tax Bills and that is not only the evidence for the proof of residence in the city of Surat. The nature of evidence insisted by the respondent No.1 i.e. last three years **Municipal Tax Bill should be treated, only, as a guideline for the committee** for the admission to first year M.B.B.S. Course in respondent No.1. Till last year, presentation of house tax bill was treated at par with other evidences, for residential proof but this year, respondent No.1 is insisting for last three years Municipal Tax Bills in the name of parents etc. of the applicant, as condition precedent for considering the case of applicant (who is petitioner) for reserved seats for “Local Student”. This insistence by respondent No.l is arbitrary. Even if, applicant cannot present last three years municipal tax bills in the name of their parents, the case of the applicant, ought to be scrutinise by respondent No.1 on the basis of other evidences. In other words, respondent No.1 ought to draw its minds, if student-applicant is able to prove the fact of his residence within Surat Municipal Corporation Area, even with the help of documentary evidences, **other than last three years municipal tax bills**. Sometimes rigid rule of acceptance of a particular type of documentary evidence like last three years Municipal tax bills create an absolute negative

effect e.g. a person, who is not residing in the Surat Municipal Corporation area might be having property in Surat Municipal Corporation area and, therefore, might be paying the tax bill also, such persons' children may get admission on local students quota reserved for local student on the basis of three years house tax bills. In fact, respondent No.1 instead of insisting for house tax bills for last three years, ought to have insisted on the proof of actual residence. If the student is actually residing in the city of Surat and is otherwise fulfilling rest of the criteria for getting admission in the first year M.B.B.S. Course, the students ought to be treated as local students.

(iv) The Municipal Tax Bill, ration card, electricity bill, passport, election identity card, gas bill, etc., which are narrated in the rules 1.2.1(1) and 1.2.1(2) ought to have been treated at par with each other. No preferential treatment should be given to any one of the evidences. Which evidence, will be the best evidence, for the proof of residence, depends upon the facts and circumstances of each case. As narrated hereinabove, too much narrowness in acceptance the nature of proof (Municipal Tax Bills only) may lead to absurd result. Man having property in Surat Municipal Corporation area but residing out side, might be paying tax, (which is obligatory otherwise there can be auction of his property) will get admission in the reserved category for local students. **The respondents ought to have concentrated on proof of residence of Surat Municipal Corporation area. The said fact can be proved with the help of several type of documents. The best evidence has to be produced** by the applicant –

student and it has to be evaluated by the respondent. In the present case, for the aforesaid reasons, Surat Municipal Corporation House Tax Bills for last three years in the name of Student/ Father/ Mother/ Parental grand father/ Parental grand mother/ Guardian (if parents are not alive) either as owner or possessive holder are mere illustrative in nature for proving the fact of residence in Surat Municipal Corporation area. The students can produce the other evidence also, if the first type of evidence (three years tax bills) is not available with them. It is the duty of the respondent to consider all the documentary evidences presented by applicant-student as proof of residence, without insisting for Municipal Tax Bills. What evidences are to be given to prove that applicant-student is local resident of city of Surat, that must be left at the discretion of the applicant-student. Let student give best evidence for his local residence. Thereafter respondent no.1 should evaluate them and should come to a conclusion whether applicant-student is local student or not. **The documents referred to in Rule 1.2.1 for admission in first year M.B.B.S. Course are mere illustrative and they are not exhaustive.** Respondent No.1 cannot insist for a particular type of document, as is done, vide Rule 1.2.1(1) i.e. for last three years Municipal Tax Bills. **There can be other better evidences, than what are illustratively, given in Rule 1.2.1**. Respondent No.1 cannot reject the claim of applicant-student, only on the ground that applicant-student has failed to produce last years municipal tax bills in the name of applicant or his father/mother/parental grand father/ parental grand mother, etc.

(v) In the present case, the assessment register (for house tax) maintained by Surat Municipal Corporation as per Chapter-VIII of Schedule-A to the Bombay Provincial Municipal Corporation Act,1949 for the year 2002-03 clearly reflects the name of the father of the petitioner but in the Municipal Tax Bill for the year 2002-03, the name of the father of the petitioner is not reflected and, therefore, the petitioner is not been treated as a local student for the reserved category admission. The action of respondent No.1 in view of this fact is dehorse the Rules. Looking to the nature of evidence presented by the applicant before the respondent No.1 and before this Court, the petitioner is entitled to be evaluated by respondent No.1, for reserved quota seats for local students. The claim of applicant-student cannot be brushed aside, due to non-production of last three years Municipal tax bills in the name of his parents, etc. as desired in Rule 1.2.1 (1).

(vi) It is vehementally submitted by the learned advocate appearing for the respondent No.1 that the payment of tax makes a classification rational for treating local students different from rest of the other students. Primarily attractive argument is not accepted by this Court mainly for the reason that the rules do not require presentation of receipt of payment of tax. Rules do not require that the applicant or their parents must have paid the municipal tax. Rules do not require that those who paid tax, regularly, will be given separate reserved quota seats as the local students. What is envisaged under the rules is that the students must have cleared their S.S.C. (Std.X), Std.XI

and the qualifying examination H.S.C.E. (Std XII) from the School located either within the limits of Surat Municipal Corporation area or within the limits of Surat Urban Development Authority area, **provided that the applicant must be residing within the limits of Surat Municipal Corporation area.** What is essentially required is that the applicant must be residing within Surat Municipal Corporation area. There can be varieties of proof with the applicant, for proving the fact that the applicant is resident of city of Surat. The burden of proof is upon the applicant and it is for him, to discharge this burden. Applicant-student may submit the proof like tax bill, ration card, electricity bill, passport, election identity card, gas bill or **the like,** evidences and it is for the evaluating committee of respondent No.1, who is granting admission to judge whether the nature of evidence presented, by the applicant, is sufficient enough, to prove the fact of residence of the applicant or not, but the respondent can never insist, arbitrarily, a particular type of evidence in priority over other types of evidences as has been insisted in this case in Rule 1.2.1(1). Evidence for local residence, referred in Rule 1.2.1(1) is insisted to be presented by student, in priority to evidences referred in Rule 1.2.1(2). This insistence by respondent No.1 is arbitrary. **All the evidences referred in Rule 1.2.1(1) as well as in Rule 1.2.1(2) should be treated at par with each other**. Respondent No.1 has arbitrarily bifurcated the evidences in two classes/ groups, one is Municipal Tax Bill and in second group Ration card, Electricity bill, Passport, Election identity card, Gas bill. Still there can be better evidence as narrated

hereinabove. Sometime man may be residing in the house, which is house of his distant relative or friend, government bungalow or municipal quarter. The name of resident of the dwelling unit, might not be reflected in the Municipal Tax Bill. Sometimes there may be a dispute between the resident of dwelling unit for the change of name in the assessment register. Sometimes Surat Municipal Corporation might not be issuing bill at all as the quarters are owned by Surat Municipal Corporation itself. There may be several combinations of facts. The applicant may not be in position, to give last three years house tax bill, nonetheless, the applicant might have better evidences, to be presented before respondent No.1 medical college. The respondent should not insist any particular type of evidence. The other proof of residence, should also be allowed to be presented as the evidences referred in Rule 1.2.1 are mere illustrative in nature. There can be other better evidence like first information report sometimes registered against or by the member of the family of the applicant under the Code of Criminal Procedure,1973 or Life Insurance Corporation policy or bank accounts reflects the residence of the applicant, income-tax returns or driving license or the like, of the applicant or of his parents can also reflect the residential address of the applicant/ Father/ Mother / Parental grand father / Parental grand mother of the applicant. This list is also not exhaustive in nature but the same can provide enough guideline, to those who are evaluating the evidences, for the residence of the applicant. Which evidences to be accepted in preference to another, (by the respondent No.1) that all depends upon the facts and circumstances of the

case but the mathematical insistence for presentation of last three years municipal tax bills without properly evaluating rest of the evidences is arbitrary and deserves to be quashed and set aside. The presentation of the evidence, should to be left at the full discretion of the applicant. A guidance can be given by the respondent by giving list, of types of probable evidences, (like which are referred to in Rule 1.2.1) but method of proving the fact of residence cannot be driven by the respondent. It is rightly contended by the learned advocate appearing for the petitioner that even under the Indian Evidence Act, particular type of document is not insisted, mathematically and rigidly to prove a particular fact. Always best evidence for proving the fact should be presented. How to prove the facts should be left upon the person, upon whom the burden of proof lies. Even in criminal cases, whether the facts have to be proved beyond reasonable doubt, a particular type of evidence is not required. What is required is the best evidence to be presented. In Civil Cases, the standard of proof is not as strict as that of criminal case and therefore, also all types of evidences to prove the fact of residence within local limits of Surat Municipal Corporation, ought to be allowed to be presented without giving undue importance to Municipal tax bills.

10. Thus, for the foregoing reasons, in the present case, the insistence of last three years Municipal house tax bills as a evidence for claiming reservation as a local student is arbitrary and is hereby quashed.

11. The respondent No.1 is directed to reconsider the

case of the petitioner in view of the observation made hereinabove by treating the municipal tax bill evidence at par with other evidences and the communication dated 29th June,2005, which is at Annexure “E” to the memo of petition is hereby quashed. The respondent will take a decision on or before 22nd July,2005. The decision shall be communicated to the petitioner on or before 26th July,2005. Respondents are directed to keep one seat vacant in local quota seats for local students in general category upto 29th July,2005, if the decision is against the petitioner. Rule made absolute to the aforesaid extent. D.S. Permitted.

(D.N. PATEL,J)

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